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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/767,227	01/28/2004	William Welch	019599-000211US	2598
73066 7590 09/04/2007 Hickman Palmero Truong & Becker LLP/ Yahoo! Inc. 2055 Gateway Place Suite 550 San Jose, CA 95110-1089			EXAMINER HOANG, HIEU T	
			ART UNIT 2152	PAPER NUMBER
			MAIL DATE 09/04/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

MN

Office Action Summary	Application No. 10/767,227	Applicant(s) WELCH ET AL.	
	Examiner Hieu T. Hoang	Art Unit 2152	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7, 21 and 22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 21, 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>05/27/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to the communication filed on 01/28/2004.
2. Claims 1-7, 21 and 22 are pending and presented for examination.
3. Claims 8-20 have been canceled.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-7, 21, 22 of the current application are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-17 of U.S. Patent No. 6,735,633 (hereafter '633).

<u>The current application</u>	<u>'633</u>
Claim 1	Claims 1, 7, 11, 14, 15, 16
Claim 2	Claim 2
Claim 3	Claim 1
Claim 4	Claim 7
Claim 5	Claim 7
Claim 6	Claim 9, 10
Claim 7	Claim 17
Claim 21	Claims 1, 7, 11, 14, 15, 16
Claim 22	Claims 1, 7, 11, 14, 15, 16

6. Although the conflicting claims are not identical, they are not patentably distinct from each other because: claim language in the current application has been somewhat rewritten; but the claims cover the same or even broader invention as in '633.

7. For claim 1, '633 claim specifying apportionment of the bandwidth to a plurality of data classes (e.g., claim 16, limitation 1); receiving a plurality of data streams wherein each data stream has at least one attribute that associates the data stream with one of the data classes (e.g., claim 16, limitation 2); from a plurality of acceptable transfer rates, negotiating a transfer rate for each data stream, wherein the transfer rate is limited to the bandwidth apportioned to the data class associated with each data stream (e.g., claim 16, limitation 3); and transmitting the data streams on the data network at

the negotiated transfer rates (e.g., claim 16 last limitation) a stream processor, having logic to receive the data stream and to; an output coupled to the stream processor, having logic to receive the data stream and transmit the data stream on the data network at the negotiated transfer rate (e.g., claim 1 limitations 1 and 3).

8. Claims 2-7, 21 and 22 are rejected for the rationale as mapped in the table above.

Claim Rejections - 35 USC § 112

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Consider the last two limitations of claim 1 “a stream processor, having logic to receive the data stream and to; an output coupled to the stream processor, having logic to receive the data stream and transmit the data stream on the data network at the negotiated transferred rate;” first of all, claim 1 is a method claim, so the claimed “stream processor” and “output coupled to the stream processor” are devices of possibly a system that cannot belong to method claim 1. Secondly, because the claim already recites “receiving a plurality of data streams” and transmitting the data streams” (second and forth limitation), it is unclear whether the steps “receive the data stream”

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and "transmit the data stream on the data network at the negotiated transfer rate" in the last two limitations are done twice or just being duplicated. Appropriate correction is required.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

13. Claims 1-7, 21, and 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Shaffer et al. (6,757,277, hereafter Shaffer).

14. For claim 1, Shaffer discloses a method for allocating bandwidth of a data network to a plurality of data streams, comprising:

specifying apportionment of the bandwidth to a plurality of data classes (col. 5 lines 57-58, data and voice bandwidth apportionment, col.4 lines 45-48, fig. 4, 5, bandwidth threshold X, Y of traffics);

receiving a plurality of data streams wherein each data stream has at least one attribute that associates the data stream with one of the data classes (fig. 2, receiving video, audio or data traffics);

from a plurality of acceptable transfer rates, negotiating a transfer rate for each data stream (col. 4 lines 21-32, audio, video coding provides acceptable transfer rates (or bandwidth per stream) for each type of traffic), wherein the transfer rate is limited to the bandwidth apportioned to the data class associated with each data stream (col. 5 lines 57-58, data and voice bandwidth apportionment, col.4 lines 45-48, fig. 4, bandwidth threshold of traffics); and

transmitting the data streams on the data network at the negotiated transfer rates (col. 5 lines 43-45, adjusting coding algorithm to negotiated rate and transmitting at that rate);

a stream processor, having logic to receive the data stream and to (fig. 2, video, audio, data I/O);

an output coupled to the stream processor, having logic to receive the data stream and transmit the data stream on the data network at the negotiated transfer rate (col. 5 lines 43-45, adjusting coding algorithm to negotiated rate and transmitting at that rate).

15. For claim 2, Shaffer further discloses the step of receiving comprises steps of: receiving stream annotations associated with each of the data streams; and activating a plug-in to receive each data stream, wherein the type of plug-in is determined from the

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stream annotations (fig. 2, col. 3 lines 6-33, audio, video inherently has annotations in the header identifying sender, receiver, protocol type, codec type, resolution, quality etc.)

16. For claim 3, Shaffer further discloses the step of negotiating comprises steps of: determining a plurality of acceptable transmission rates for each data stream; and negotiating a transfer rate for each data stream, wherein the transfer rate is a selected one of the acceptable transmission rates (col. 5 lines 34-37, negotiating available transfer rates associating with each coding algorithm) and is limited to the bandwidth apportioned to the data class associated with each data stream (col. 5 lines 57-58, data and voice bandwidth apportionment, col.4 lines 45-48, fig. 4, bandwidth threshold of traffics).

17. For claim 4, Shaffer further discloses the step of transmitting comprises steps of: transforming each data stream to the negotiated transfer rate (col. 3 lines 6-34, coding is transforming); and transmitting the data streams on the data network at the negotiated transfer rates (col. 5 lines 43-45).

18. For claim 5, Shaffer further discloses the step of transforming comprises a step of thinning, transcoding or decimating the data stream to the negotiated transfer rate (col. 3 lines 6-34, audio/video coding).

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19. For claim 6, Shaffer further discloses the transfer rate is a first transfer rate and the method further comprises steps of: determining unallocated bandwidth on the data network (col. 5 line 58-col. 6 line 2); negotiating a second transfer rate for at least one data stream, wherein the second transfer rate uses the unallocated bandwidth (col. 6 line 25-35, increasing bandwidth usage by using more bandwidth-required coding due to available bandwidth); transforming the at least one data stream to the negotiated second transfer rate; and transmitting the at least one data stream on the data network at the second transfer rate (col. 6 lines 34-35).

20. For claim 7, Shaffer further discloses steps of: receiving at least a second data stream having an associated data class; negotiating a third transfer rate for the at least one data stream, wherein the third transfer rate is limited to the bandwidth apportioned to the data class associated with the at least one data stream; negotiating a fourth transfer rate for the at least second data stream, wherein the fourth transfer rate is limited to the bandwidth apportioned to the data class associated with the at least second data stream; and transmitting on the data network, the at least one data stream at the third transfer rate and the at least a second data stream at the fourth data rate (col. 5 line 22-col. 6 line 34, the second data stream and first data stream can just belong to a same class and their transfer rates can be adjusted to a third and forth transfer rate dynamically according to bandwidth threshold and maximum bandwidth of their class).

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21. For claim 21, Shaffer further discloses in a data network configured to transmit data streams at negotiated transfer rates, wherein each of a plurality of data streams has at least one attribute that associates the data stream with a particular data class, and wherein a negotiated transfer rate is limited to bandwidth apportioned to the data class of a data stream, the improvement comprising:

allocating bandwidth to the data streams by negotiating a transfer rate for each of the plurality of data streams from a plurality of acceptable transfer rates prior to transmitting each data stream at the negotiated transfer rate (col. 3 lines 6-34, col. 4 lines 21-32, audio, video coding provides acceptable transfer rates (or bandwidth per stream) for each type of traffic).

22. For claim 22, Shaffer further discloses a system for allocating bandwidth of a data network to a plurality of data streams, comprising:

means for determine a plurality of acceptable transmission rates for a data stream (col. 3 lines 6-34, codec for a plurality of available transmission rates for a audio/video flow);

means for negotiating a transfer rate for the data stream, wherein the transfer rate is a selected one of the plurality of acceptable transmission rates (col. 3 lines 6-34, col. 4 lines 21-32, audio, video coding provides acceptable transfer rates (or bandwidth per stream) for each type of traffic) and is limited to a portion of the bandwidth apportioned to a data class associated the data stream (col. 5 lines 57-58, data and

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voice bandwidth apportionment, col.4 lines 45-48, fig. 4, 5, bandwidth threshold X, Y of traffics); and

means for transmitting the data stream on the data network at the negotiated transfer rate (col. 5 lines 41-44, col. 6 lines 33-35, adjusting the codec and transmit at negotiated rate).

Conclusion

23. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- McCloghrie et al. US 6,286,052.
- Paul et al. US 6,148,005.
- Ludwig, JR. US 5,751,338.

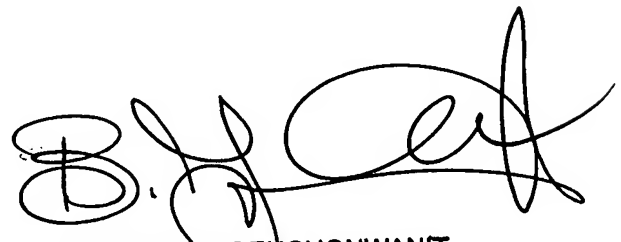
24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu T. Hoang whose telephone number is 571-270-1253. The examiner can normally be reached on Monday-Thursday, 8 a.m.-5 p.m., EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571-272-3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/HH/
HH



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